

FILED

September 28, 2017

**OFFICE OF
APPELLATE COURTS**

**STATE OF MINNESOTA
IN SUPREME COURT**

A17-1142

The Ninetieth Minnesota State Senate, et al.,

Respondents,

vs.

**Mark B. Dayton, in his official capacity as
Governor of the State of Minnesota, et al.,**

Appellants.

ORDER

On September 8, 2017, we directed the parties to file statements that identified the amount of carryover funds available to the Legislature and the date by which the Legislature will exhaust those funds. In statements filed on September 18, 2017, the parties agreed that the Minnesota State Senate has available to it \$6,004,325.94, which at current estimated monthly spending levels would be exhausted by December 1, 2017, and the Minnesota House of Representatives has available to it \$10,681,438.14, which at current estimated monthly spending levels would be exhausted by February 1, 2018.

On September 25, 2017, the Governor filed an amended statement regarding carryover and appropriated funds available to the Legislative Coordinating Commission (LCC), which funds, the Governor asserts, the Legislature may intend to access for its funding needs. If the Legislature does access the LCC carryover and appropriated funds, the

Governor contends that the funds available to the Minnesota State Senate and the Minnesota House of Representatives would not be exhausted until after the start of the next legislative session on February 20, 2018.

On September 26, 2017, the Legislature filed a response to the Governor's amended statement. The Legislature disagrees with the "numbers" provided by the Governor for the funds available to the LCC, but did not state whether it intends to access the LCC's carryover funds and appropriations for the 2018-2019 biennium. The Legislature noted that its ability to "move funds from the LCC" to either legislative chamber is "untested" and would require "numerous decisions and procedural steps."

"The Legislature Coordinating Commission may transfer unobligated balances among general fund appropriations to the legislature." Minn. Stat. § 3.305, subd. 2 (2016). Funds carried forward "into the next biennium" may be used for purposes defined by statute, including "to pay expenses associated with sessions, interim activities, public hearings or other public outreach efforts and related activities." Minn. Stat. § 16A.281 (2016). Further, "[t]he approval of the commissioner of management and budget" is not required to use carryover funds held by the Legislature. *Id.*

We previously expressed concern that the "extent of the funding available to the Legislature . . . is unclear, as is the date by which that funding will be exhausted." *Ninetieth Minn. State Senate v. Mark B. Dayton*, No. A17-1142, Order at p. 4 (Minn. filed Sept. 8, 2017). The parties' submissions regarding the funds available to the Legislature and the date by which that funding will be exhausted clarified some of this uncertainty, but have not addressed the Legislature's authority to spend any of the funds that have been disclosed

in these submissions. In addition, it is unclear whether funds from the LCC appropriations and the LCC carryover funds may be available to the Legislature and whether those funds may extend the exhaustion dates previously identified (December 1, 2017 for the Senate and February 1, 2018 for the House). *See* Minn. Stat. § 3.305, subd. 2 (allowing the LCC to transfer “unobligated balances”); Minn. Stat. § 16A.281 (limiting the purposes for which carryforward funds may be expended). *Cf.* Minn. Stat. § 16A.15, subd. 3 (2016) (explaining that a “payment may not be made without prior obligation” and an obligation cannot be incurred without “a sufficient unencumbered balance in the fund, allotment, or appropriation to meet it.”).

Additional submissions are therefore necessary to assist us in deciding the parties’ dispute regarding the Governor’s line-item veto of the Legislature’s biennial appropriation. To be clear, the court requires specific statements that identify *all* funds the Legislature may use to fund its operations in the absence of an appropriation for the FY2018-2019 biennium, whether current appropriations or carryover fund balances, and the legal authority that permits the Legislature to use these funds.

Based on all files, records, and proceedings in this matter,

IT IS HEREBY ORDERED that on or before October 5, 2017, the parties shall file informal memoranda that specifically identify (a) the amount of funds held by the Minnesota House of Representatives, the Minnesota State Senate, the Legislative Coordinating Commission, and any other legislative committee or commission as of September 1, 2017 that are available to or can be used by the Minnesota House of Representatives or the Minnesota State Senate to fund the operations of the House or the Senate in the absence of

an appropriation for the FY2018-2019 biennium; and (b) the specific statute or constitutional provision that allows the Minnesota House of Representatives or the Minnesota State Senate to use any of those funds to pay any expenses or costs incurred.

Dated: September 28, 2017

BY THE COURT:



Lorie S. Gildea
Chief Justice

STRAS, J., took no part in the consideration or decision of this case.